

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**TRISTAR INVESTORS, INC.,**

**Plaintiff,**

**v.**

**AMERICAN TOWER CORPORATION,  
et al.,**

**Defendants.**

**CIVIL ACTION NO. 3:12-CV-499-M**

---

**AMERICAN TOWER, LLC, et al.,**

**Counter-Plaintiffs,**

**v.**

**TRISTAR INVESTORS, INC., et al.,**

**Counter-Defendants.**

---

**TRISTAR INDIVIDUALS’  
MOTION FOR SUMMARY JUDGMENT (RICO CLAIMS)**

TO THE HONORABLE JUDGE BARBARA M.G. LYNN:

Pursuant to Federal Rule of Civil Procedure 56 and Local Rules 7 and 56, David Ivy, Ed Wallander, Robert Giles, Dale Gilardi, Jerry Vogl, John Lemmon, Michael Mackey, and Matt Newton (collectively, the “TriStar Individuals”) file this Motion for Summary Judgment on all of the claims filed against them in Counter-Plaintiffs American Tower LLC, SpectraSite Communications, LLC, and American Towers, LLC’s (collectively, “American Tower’s”) Sealed Answer, Affirmative Defenses, and Counterclaims to Plaintiff’s Second Amended Complaint (Doc. #100) (the “Counterclaim”). As more fully set forth in the accompanying Brief in Support of the TriStar Individuals’ Motion for Summary Judgment, which is incorporated by

reference for all purposes, the TriStar Individuals move for summary judgment on the following grounds:

### **SUMMARY**

In Count II of the Counterclaim, American Tower alleges that the TriStar Individuals have violated Section 1962(c) of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c). This claim fails as a matter of law for two independent reasons. First, American Tower has not alleged or sustained a “RICO injury.” Second, the alleged pattern of racketeering activities did not proximately cause American Tower’s alleged injuries.

In Count III of the Counterclaim, American Tower alleges that the TriStar Individuals have violated Section 1962(d) of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(d). This claim fails as a matter of law because it is predicated on a violation of Section 1962(c). Because American Tower has not alleged or sustained a “RICO injury,” and because the alleged pattern of racketeering activities did not proximately cause American Tower’s alleged injuries, Count III also fails as a matter of law.

The matters required by Local Rule 56.3(a)(2) are set forth in the accompanying Brief in Support of the TriStar Individuals’ Motion for Summary Judgment.

WHEREFORE, the TriStar Individuals respectfully request that the Court grant their Motion for Summary Judgment, enter a take-nothing judgment on all of American Tower’s claims against them, and grant them all other and further relief to which they are justly entitled.

Dated: October 3, 2013

Respectfully submitted,

VINSON & ELKINS L.L.P.

/s/ Matthew R. Stammel

---

William D. Sims, Jr.

Texas Bar No. 18429500

Thomas S. Leatherbury

Texas Bar No. 12095275

Matthew R. Stammel

Texas Bar No. 24010419

John D. Taurman

Texas Bar No. 19680400

Kyle D. Young

Texas Bar No. 24070899

Tyler J. Bexley

Texas Bar No. 24073923

2001 Ross Avenue, Suite 3700

Dallas, Texas 75201

Tel: 214.220.7700

Fax: 214.220.7716

bsims@velaw.com

mstammel@velaw.com

jtaurman@velaw.com

kyoung@velaw.com

tbexley@velaw.com

Harry M. Reasoner

Texas Bar No. 16642000

Stacey N. Vu

Texas Bar No. 24047047

1001 Fannin Street, Suite 2500

Houston, Texas 77002

Tel: 713.758.2222

Fax: 713.758.2346

hreasoner@velaw.com

svu@velaw.com

*Attorneys for Counter-Defendants David Ivy, Ed Wallander, Robert Giles, Dale Gilardi, Jerry Vogl, John Lemmon, Michael Mackey, and Matt Newton*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 3, 2013, I served a true and accurate copy of the foregoing document on all counsel of record via filing of the same with the Court's CM/ECF system.

/s/ Tyler J. Bexley